

§ 381.6

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§ 381.6 Performance of musical compositions by other public broadcasting entities.

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with NPR. In the event that a station owned by a public broadcasting entity broadcasts programming by means of an in-band, on-channel (“IBOC”) digital radio signal and such programming is different than the station’s analog broadcast programming, then any such programming shall be deemed to be provided by a separate station requiring a separate royalty payment.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and noncommercial radio stations within the scope of this section concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) *Royalty rate.* A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	\$ 550	\$ 567	\$ 583	\$ 601	\$ 619
Level 2	250,000–499,999	1,000	1,030	1,061	1,093	1,126
Level 3	500,000–999,999	1,500	1,545	1,591	1,639	1,688
Level 4	1,000,000–1,499,999	2,000	2,060	2,122	2,185	2,251
Level 5	1,500,000–1,999,999	2,500	2,575	2,652	2,732	2,814
Level 6	2,000,000–2,499,999	3,000	3,090	3,183	3,278	3,377
Level 7	2,500,000–2,999,999	3,500	3,605	3,713	3,825	3,939
Level 8	3,000,000 and above	5,000	5,150	5,305	5,464	5,628

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	\$ 550	\$ 567	\$ 583	\$ 601	\$ 619
Level 2	250,000–499,999	1,000	1,030	1,061	1,093	1,126
Level 3	500,000–999,999	1,500	1,545	1,591	1,639	1,688
Level 4	1,000,000–1,499,999	2,000	2,060	2,122	2,185	2,251
Level 5	1,500,000–1,999,999	2,500	2,575	2,652	2,732	2,814
Level 6	2,000,000–2,499,999	3,000	3,090	3,183	3,278	3,377
Level 7	2,500,000–2,999,999	3,500	3,605	3,713	3,825	3,939
Level 8	3,000,000 and above	5,000	5,150	5,305	5,464	5,628

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

	Population count	2008	2009	2010	2011	2012
Level 1	0–249,999	\$ 120	\$ 124	\$ 127	\$ 131	\$ 135
Level 2	250,000–499,999	200	206	212	219	225
Level 3	500,000–999,999	300	309	318	328	338
Level 4	1,000,000–1,499,999	400	412	424	437	450
Level 5	1,500,000–1,999,999	500	515	530	546	563
Level 6	2,000,000–2,499,999	600	618	637	656	675
Level 7	2,500,000–2,999,999	700	721	743	765	788
Level 8	3,000,000 and above	1,000	1,030	1,061	1,093	1,126

(4) For the performance of any other such compositions, in 2008 through 2012, \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year. Each annual payment shall be accompanied by a signed declaration stating the Population Count of the public broadcasting entity and the source for such Population Count. An exact copy of such declaration shall be furnished to each of ASCAP, BMI and SESAC. Upon prior written notice thereof from ASCAP, BMI or SESAC, a public broadcasting entity shall make its books and records relating to its Population Count available for inspection.

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 10 stations to furnish such reports.

(f) *Definitions.* As used in paragraphs (c) and (d) of this section, the following terms and their variant forms mean the following:

(1) *Population Count.* The combination of:

(i) The number of persons estimated to reside within a station's Predicted 60 dBu Contour, based on the most recent available census data; and

(ii) The nonduplicative number of persons estimated to reside in the Predicted 60 dBu Contour of any Translator Station or Booster Station that extends a public broadcasting entity's signal beyond the contours of a station's Predicted 60 dBu Contour.

(iii) In determining Population Count, a station or a Translator Station or a Booster Station may use and report the total population data, from a research company generally recognized in the broadcasting industry, for the radio market within which the station's community license is located.

(2) *Predicted 60 dBu Contour* shall be calculated as set forth in 47 CFR 73.313.

(3) *Translator Station and Booster Station* shall have the same meanings as set forth in 47 CFR 74.1201.

§ 381.7 Recording rights, rates and terms.

(a) *Scope.* This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(c)(3).

(b) *Royalty rate.* (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2008–2012
(A) Feature	\$114.09
(B) Concert feature (per minute)	34.26
(C) Background	57.66
(D) Theme:	
(1) Single program or first series program	57.66
(2) Other series program	23.41

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composi-

tion rates by the number of different compositions in that program: